A

ROHANI AB KADIR

v.

TENAGA NASIONAL BHD

B

HIGH COURT MALAYA, SHAH ALAM
NORAINI ABDUL RAHMAN JC
[CIVIL SUIT NO: 22-121-2003]
31 JANUARY 2011

C ***EVIDENCE:*** *Documentary Evidence - Admissibility of - Unstamped document of title - Proof of ownership - Dispute regarding admissibility of Borang 14A produced by plaintiff - Whether unstamped Borang 14A admissible as proof of plaintiff's ownership*

D ***TORT:*** *Negligence - Professional negligence - Electrical installation work damaging cable - Professional negligence - Defect in temporary connection made by defendant's technician - Whether defendant liable for negligence*

TORT: *Damages - Assessments - Negligence - Quantum of damages - Damages caused by fire - Loss of profit - Loss of fixtures and fittings -* E *Rental claim for alternative premises - Cost of rebuilding house - Claim of interest on damages - Whether plaintiff entitled to damages for losses suffered*

The plaintiff's house was razed to the ground by a fire. She F claimed that the fire was caused by the defendant's negligence. Several days prior to the incident, the defendant's technician, Azman ('SD1') made a temporary connection by twirling the cables together with an adhesive tape. These cables bypassed the meter attached to a wooden meter board. After several appeals to G the defendant, the plaintiff was advised *vide* a letter from the Kementerian Tenaga, Komunikasi dan Multimedia, Malaysia that the cause of the fire could not be determined. The plaintiff then engaged a registered electrical engineer ('SP1') to prepare a report on the probable cause of the fire. With that report, the plaintiff H filed a suit claiming for damages against the defendant and in her pleadings, claimed for the following: (i) RM15,000 for the loss of profit; (ii) rental of alternative premises at RM600 per month from the date of the fire; (iii) RM100,000 for total loss of fixtures and fittings; (iv) RM200,000 for cost of rebuilding the house; (v) I interest of 8% on general damages; (vi) interest of 4% on special damages; and, (vii) further interest of 8% from the date of

judgment to date of realization. The defendant however, denied that the plaintiff was the owner of the house under the National Land Code due to the fact that she had produced an unstamped Borang 14A, which created a dispute on its admissibility. They further denied that the fire was due to their negligence.

Held (allowing the plaintiff's application with costs):

(1) Evidence of the valuer and the valuation report was considered. Although the plaintiff's name was not mentioned on it, there was no dispute that the valuation was intended to value the house for the purpose of the plaintiff's loan application. In fact, during cross-examination, the plaintiff was not questioned on this issue. Since this was a claim in tort, the Borang 14A was admissible as evidence and, thus, proved that the plaintiff was the owner of the house. (para 3)

(2) It was a clear admission by SD1 in his witness statement that the meter was hot and that there was evidence of burn marks at the neutral wire terminal. It was an undisputed fact that the meter was mounted on a wooden meter board and wood is a combustible material that can ignite fire. SD1's admission that he used a smaller sized cable to connect the cables corroborated the plaintiff's evidence. Furthermore, in his report, SP1 concluded, "that in all probability the fire could have been caused as a result of increased heat at the joints in the cables at the meter board." (paras 6, 9 & 10)

(3) Based on the above evidence, the plaintiff had proven her case on a balance of probabilities that the fire was caused by the incompatible cable joints made by SD1. (para 13)

(4) In view of damages: (i) the claim for loss of durian trees was not allowed as there was no proof of durian sales or profits; (ii) rental for alternative premises was granted at RM700 per month for a period of seven years; (iii) for loss of fixtures and fittings, it was found reasonable to award the sum of RM34,873.23 instead of the original sum pleaded; and, (iv) the cost of rebuilding the house was allowed at RM95,000 as assessed in the fire insurance. The claim on interest of 4% for special damages was not allowed whereas, the remaining two claims on interest of 8% were allowed. (paras 15-23)

A **Case(s) referred to:**
Wong Cheong Kong Sdn Bhd v. Prudential Assurance Sdn Bhd [1998] 1 CLJ 916 HC ***(refd)***

Legislation referred to:
Civil Law Act 1956, s. 11

B

For the plaintiff - Sharmini Navaratnam; M/s Siva Dharma & Assocs
For the defendant - Ganesh Subramaniam (Tan Chee Kian with him); M/s Khoo & Sidhu

C *Reported by Melanie Murthy*

JUDGMENT

D **Noraini Abdul Rahman JC:**

[1] Sometime in 1999, plaintiff said she bought the house and land known as Lot 1468, Batu 19 ¾, Jalan Sungai Lui 43100, Hulu Langat, Selangor from one Datuk Zakaria. For the purposes of financing the purchase of the house, a valuation report was
E prepared by Anthony Chua Kian Beng from KGV - Lambert Smith Hampton (M) Sdn. Bhd. Her family stayed in that house. The lights in plaintiff's house were flickering. She then went to the defendant's van within the vicinity to lodge a complaint. Two technicians came to her house on 6 February 2000 at about 3pm.
F One of the technician by the name of Azman repaired four wires ie, wires 1, 2, 3 and 4. He connected wires 1 and 4 together with a black loytape. He connected wires 2 and 3 also with a black loytape. These wires bypassed the meter which record the flow of electricity into the house. The meter was attached to a
G wooden meter board. About 17 days later, a fire broke out and the house was razed to the grounds. The plaintiff lodged a police report on 16 March 2000 (first police report). After several complaints about the cause of the fire to TNB and Jabatan Bekalan Elektrik expressing their unhappiness over the investigation
H into the cause of the fire, finally Kementerian Tenaga, Komunikasi dan Multimedia, Malaysia wrote to the plaintiff's husband on 7 November 2001 saying that after re investigation done by Jabatan Elektrik dan Gas, the cause of the fire cannot be determined. Plaintiff then engaged Ir. Inderjit Singh who is a
I competent Electrical Engineer registered with Jabatan Bekalan

Elektrik (JBE) to put up a report on the probable cause of fire. With that report, plaintiff then filed a suit claiming for damages against the defendant.

[2] The defendant denied that the plaintiff is the owner of the house and also, it denied that the cause of the fire was due to their negligence.

Whether Plaintiff Is Owner Of The Said House

[3] Counsel for the defendant firstly submitted that plaintiff was not the registered owner of the house under the National Land Code. Counsel for the plaintiff tendered a transfer form Borang 14A which was marked as ID17. She argued that Borang 14A (as undertaken to produce during trial) clearly showed that the plaintiff is the owner of the house but counsel for the defendant later replied that Borang 14A was not stamped and therefore it cannot be admitted as evidence. Be that as it may, the plaintiff in her evidence stated that the original document of title is with Oriental Bank from whom she had obtained a loan to finance the purchase of the house. It is true that Borang 14A is not stamped. However, I am of the opinion that the plaintiff is the owner of the said house. I had considered the evidence of the valuer (SP3) and the valuation report tendered as P13 addressed to the bank. The vendor's name is Zakaria bin Cek. Although the plaintiff's name was not mentioned, there is no dispute that the valuation was intended to value the house for purposes of plaintiff's application for loan. In fact, no question was asked during cross-examination of the plaintiff on this issue. Most of the cross-examination of the plaintiff revolves around the question of cost of the property that she paid. Plaintiff's counsel submitted that Borang 14A should be marked as exh. P17 because this is claim in tort and does not involve a claim against insurance. It is also not a claim for property under the National Land Code. I have perused Borang 14A and I agree with plaintiff's counsel's submission that the plaintiff is the owner of the house which is in issue. This is also supported by the valuation report which was never disputed by the defendant. Therefore, ID17 is marked as P17 which in turn prove that the plaintiff is the owner of the house.

A **Cause Of Fire**

[4] Plaintiff in her evidence had stated that the lights of the house were flickering. She then made a complaint to two technicians who were in the TNB's van around the vicinity. They B came at about 3pm on 6 February 2000. According to her, a temporary connection was done by Azman (SD1). She continued by saying that he connected four cables wherein the first two cables were joined with adhesive tape. The balance two cables were found to be too short and one of the technician had gone C back to the van to collect a connecting cable. Plaintiff said she overheard the colleague of Azman (SD1) telling him that the size of the cable in the van was smaller than the existing cable. Plaintiff then said that SD1 told her that the connecting cable from the van was a smaller size than the original one but that this did not D pose a problem as this was only a temporary measure. She continued by saying that SD1 proceeded to carry on with the installation of the balance two cables with the new cable joined together with adhesive tape. Nevertheless, even after this the house continued to experience constant fluctuation of electricity.

E **[5]** SD1 in his witness statement said the following:

> ... saya kemudian memeriksa meter elektrik dalam rumah dan mendapati bahawa meter tersebut berada dalam keadaan panas. Maka saya pun melakukan "cutout" untuk memeriksa sama ada F wayar-wayar yang disambung ke meter tersebut longgar. Dalam melakukan pemeriksaan, didapati bahawa terdapat kesan-kesan bakar di bahagian wayar terminal neutral.

[6] Here, it is clear admission by SD1 that the meter was hot and that there were evidence of burnt marks at the neutral wire G terminal. It is an undisputed fact that the meter is mounted on a wooden meter board and wood is a combustible material and could ignite fire.

[7] Later in his witness statement, SD1 admitted that he used H black cellotapes to join the wires. He said the following:

> Saya dapat menyambung 2 wayar dari empat wayar tersebut secara terus menerus melalui kaedah "Manuku joint" dan kemudiannya dililit dengan cellotape hitam. Namun begitu, untuk dua lagi wayar, untuk menggunakan kaedah yang sama, saya I terpaksa menggunakan sambungan wayar untuk menyambung kedua-dua wayar tersebut. Saya kemudiannya juga melilitkan

cellotape hitam ke atas sambungan ini kerana tujuan menggunakan cellotape adalah untuk memastikan bahawa wayar yang disambung tidak berada dalam terdedah.

[8] In cross examination, SD1 admitted that the wires that were taken from the van was too short in order to be connected to the wires in the house. He further said that his friend told him that the size of the wires from the van were smaller in size. This is what he said in cross examination:

S : Adakah kawan kamu memberitahu cable yang ada dalam van terlalu kecil untuk disambung?

J : Betul.

S : Adakah awak beritahu penghuni cable yang kecil tiada masalah untuk buat sambungan?

J : Tiada masalah.

[9] Therefore, his admission that he used a smaller size cable to connect the cables corroborate the evidence of the plaintiff.

[10] The plaintiff after having appealed many times to TNB, Jabatan Bekalan Elektrik finally received a reply from Kementerian Tenaga, Komunikasi dan Multimedia Malaysia informing plaintiff and her husband that after a second investigation, the cause of the fire cannot be ascertained (See letter dated 7 November 2001 marked as exh. P12). The plaintiff then engaged an expert by the name of Ir. Inderjit Singh (SP1) who is a Competent Electrical Engineer registered with Jabatan Bekalan Elektrik. In his report at exh. P1, he said:

3.3. It is a technical fact that when there is a joint in a cable especially if the joint is made without using an approved type of connector the electrical resistance in the cable at the point of the joint increases. Passage of current in a resistor produces heat and the higher the resistance the greater the heat produced. *Continuous heat at a particular point especially against a wooden board can cause the wooden board to ignite resulting in a fire.* It is for this reason that as a general rule, joints in cables are not allowed. If at all it is unavoidable, the joint must be done using a suitable connector. The Institution of Electrical Engineers (IEE) Regulation B 73 states that "where joints in cable conductors and bare conductors are necessary, they shall be mechanically and electrically sound". This implies that joints should be made only when it is unavoidable.

A

3.4. *It is also a technical fact that the smaller the size of a cable the higher the resistance of the cable. Hence the smaller cable the TNB worker used to bridge the gap in place of the meter would have produced higher heat in that section of the cables at the meter board. The continuous higher than normal heat at the wooden meter board could have contributed to the ignition of the wooden board.*

B

3.5. IEE Reg. B 73 further states that "Joints in non flexible cables shall be made by soldering, brazing, welding, or mechanical clamps or be of the compression type; …". The joints made by the TNB technicians were done by twisting the cables together and covering with loytape. This would certainly have resulted in high resistance and greater heat.

C

4. CONCLUSION

D

…

4.3. The fact that the fire occurred just 2 weeks after the TNB worker installed undersized cables in place of the TNB meter and joined the cables without a proper connector but by just twirling them together with an adhesive tape and the fact that the care taker saw the fire starting at the meter board, *it is safe to conclude that in all probability the fire could have been caused as a result of increased heat at the joints in the cables at the meter board.*

E

F

[11] SP1 also said in evidence the following:

I refer to Institute of Engineers' Regulation of joints is to be made to a cable, they must be made properly by soldering, brazing, welding or mechanical clams. According to information of owners, the TNB did not use any of the things above. He twisted wires together and covered with loytape.

G

[12] SP1 also stated that the wooden meter board is the property of TNB and this was never disputed by the defendant.

[13] Based on the above evidence, I am of the opinion that the fire was caused by the incompatible cable joints made by SD1. Hence on this issue, I find the plaintiff had proven her case on balance of probabilities.

H

I

Quantum

[14] The plaintiff had in the pleading claimed for the following:

Particulars Of Damage To Said House And The Contents

a. Total loss of the said house	RM250,000.00
b. Total loss of fixtures and fittings and contents	RM100,000.00

Particulars Of Special Damages

1. Rental at the rate of RM600.00 per month from 23.2.2000 to date and still continuing	RM
2. Cost of rebuilding the said house	RM300,000.00
3. Loss of 15 fruit bearing durian trees	RM 15,000.00
4. Loss of profits in respect of 15 durian trees at the rate of RM3,000/- per annum from 23.2.2000 and still continuing	RM
TOTAL :	RM

24. The Plaintiff claims:

a) General Damages;

b) Special Damages;

c) Interest on General Damages at the rate of 8% per annum from the date of service of the writ to the date of Judgment;

d) Interest on the Special Damages at the rate of 4% per annum from 22.2.2000 till date of Judgment.

e) Further interest at the rate of 8% per annum from the date of Judgment to date of realization.

f) Such further or other relief as this Honourable Court deems fit and just.

g) Costs.

[15] During submission plaintiff's counsel withdraw the claim for the loss of durian trees as there is no evidence led on this. She further submitted that the plaintiff's claim for loss of profit for durian fruits of RM3,000 per annum for a period of five years be allowed. I am of the opinion that there is no proof of the sale of the durian fruits and the profits made. As such, the claim for loss of profit for durian fruits is not allowed.

[16] As for the rental of alternative premises, the court is of the opinion that the plaintiff and family had to live in a house somewhere. They cannot be living under the moon and the stars. As such I am allowing rental as claimed by the plaintiff ie, RM700 x 12 x 7 years = RM58,800. In allowing this claim, I also took note that the defendant did not challenge the period of time when plaintiff and family had to stay in the rented house.

[17] For loss of fixtures and fittings, plaintiff's counsel in submission only ask for RM34,873.23 instead of originally RM100,000 as pleaded. The court took note that in any ordinary house of an ordinary man, certain fixtures and fittings would be needed. As such, the court finds it reasonable to award RM34,873.23.

[18] For cost of rebuilding the house, plaintiff's counsel submitted the following:

> The Plaintiff has given evidence that the cost of rebuilding the house was RM200,000.00.
>
> SP3 has given evidence that the cost of rebuilding the house in 1999 was RM95,000.00 – (report on fire insurance was RM95,000 (P13) pg. 9 of Bundle D).
>
> In the circumstances the Plaintiff will limit the claim for rebuilding of her house to RM95,000.00 as this was the sum as stated by the valuer SP3.

[19] I agree with her submission. In fact the valuer (SP3) in his report stated the following:

> The Fire Insurance Value is assessed at no less than RM95,000.

[20] I am therefore allowing RM95,000 for the cost of rebuilding the house.

[21] Counsel for plaintiff also submitted that the interest for sums awarded should be at 8% per annum from the date of the fire. She cited s. 11 of the Civil Law Act 1956 which provides the following:

> 11. Power of Courts to award interest on debts and damages.
>
> In any proceedings tried in any Court for the recovery of any debt or damages, the Court may, if it thinks fit, order that there shall be included in the sum for which judgment is given interest at such rate as it thinks fit on the whole or any part of the debt or damages for the whole or any part of the period between the date when the cause of action arose and the date of the judgment.

[22] Plaintiff's counsel also cited the case of *Wong Cheong Kong Sdn. Bhd. v. Prudential Assurance Sdn. Bhd.* [1998] 1 CLJ 916 wherein the learned High Court Judge Vincent Ng J (as he then was) allowed the plaintiff's claim for interest at the rate of 8% from the date of the fire.

[23] Having referred to s. 11 of the Civil Law Act 1956 and the facts of the case cited above, I am of the opinion that the submission of plaintiff's counsel should not be allowed. I am therefore allowing interest as prayed for in the statement of claim at paras. 24(c) and (e) with costs.